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*Etel Group, Inc., Creative Intelligence Advertising, Scott Lavitt & Judie Levine*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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| ETEL GROUP, INC., a California corporation, CREATIVE INTELLIGENCE ADVERTISING, a sole proprietorship, SCOTT LAVITT, an individual, & JUDIE LEVINE, an individual,<br><br>Plaintiffs,<br><br>v.<br><br>WISHBONE COLLECTION, LLC, a New York limited liability company, and DOES 1 -10, inclusive,<br><br>Defendants. | Case No: 2:17-cv-2543<br><br>**COMPLAINT FOR:**<br><br>(1) Declaration of Trademark and/or Trade Dress Invalidity, Non-Infringement, Unenforceability, and Cancellation of Registration;<br>(2) Declaration of No Unfair Competition, No Misappropriation of Advertising Ideas and/or Trade Secrets, No Trademark Dilution; and<br>(3) Declaratory Judgment of Non-Infringement of Copyright; and<br>(4) Declaratory Judgment of Invalidity of Non-Competition Restrictions<br><br>**[DEMAND FOR JURY TRIAL]** |

Plaintiffs Etel Group, Inc., Creative Intelligence Advertising, Scott Lavitt & Judie Levine (together, "Plaintiffs") by and through its undersigned attorneys, sues Defendant Wishbone Collection, LLC d/b/a StickerBeans ("StickerBeans"), and alleges:

## THE PARTIES

1. Plaintiff Etel Group, Inc. ("Etel") is a California corporation having a place of business in North Hollywood, California and conducts business in Los Angeles, California, including advertising the products at issue from this Judicial District. Etel is in the business of designing, distributing and selling rhinestone sticker products under the trade name "Sticker Bling Bling."

2. Plaintiff Creative Intelligence Advertising ("CIA) is a California sole proprietorship having a place of business in Reseda, California and conducts business in Los Angeles, California, within this Judicial District. CIA provides marketing, branding and other creative services.

3. Plaintiff Scott Lavitt ("Lavitt") is an individual residing in Reseda, California, within this Judicial District. Lavitt is the principal of CIA and an officer of Etel.

4. Plaintiff Judie Levine ("Levine") is an individual residing in Agoura Hills, California, within this Judicial District. Levine is an officer of Etel. Plaintiffs Etel, CIA, Lavitt, and Levine may be collectively referred herein as "Plaintiffs".

5. Defendant Wishbone Collection, LLC d/b/a StickerBeans ("Defendant" or "StickerBeans") is a New Jersey limited liability company having a place of business in Demarest, New Jersey, is registered as a foreign limited liability company with the state of California, and conducts business in Los Angeles, California, including advertising and selling the products at issue from this Judicial District. Furthermore, StickerBeans operates an e-commerce website located at the

<www.stickerbeans.com> URL, which distributes products throughout the United States, including California and this Judicial District.

## JURISDICTION AND VENUE

6. The Court has jurisdiction over the subject matter of this action pursuant to the trademark and copyright laws of the United States, Title 15 U.S.C., and the federal Trademark Act 15 U.S.C. §§ 1125 and 1051 *et seq*., the federal Copyright Act, 17 U.S.C. § 101 *et seq*., 28 U.S.C. §§ 1331, 1338(a), and pursuant to the Declaratory Judgment Act 28 U.S.C. §§ 2201(a) and 2202. Plaintiffs further request that this Court order cancellation of the STICKERBEANS mark pursuant to 15 U.S.C. § 1119. This Court also has jurisdiction over this action under 28 U.S.C. § 1332(a), as a matter between citizens of different states in which the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) and (c), because Defendant conducts business in this District, and/or a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

## FACTS COMMON TO ALL COUNTS

8. StickerBeans designs, manufactures and sells a line of sticker products that are adorned with clear and colored rhinestones intended to "mimic the hand-set Swarovski crystal designs….on social media and in high-end boutiques in the New York City area." (*See* www.stickerbeans.com).

9. On or about November 22, 2016, StickerBeans obtained a U.S. Trademark Registration for the character mark "STICKERBEANS" in international class 16 for "stickers", but during its application StickerBeans expressly disclaimed the term "STICKER," likely because it is descriptive of the very products it sells. Accordingly, StickerBeans trademark is inherently weak and offers little protection to Defendant.

10. StickerBeans has not obtained any registration or other legal protection for its trade dress – whether the design of its sticker products or its packaging – nor

has StickerBeans obtained any type of patent for the application of rhinestones to a sticker product.

11. In or about August 2016, CIA was retained by StickerBeans to prepare a standardized logo for its sticker business using its pre-existing color scheme, design a retail display and backer card packaging for its sticker products, and perform a re-design their webpage. CIA and StickerBeans did not execute any type of written agreement governing the terms and conditions of the engagement.

12. Through this engagement, StickerBeans provided to CIA the following documents and/or information to assist in CIA's performance of its services: logo art file, sample of printed package, pictures of product and pictures of models displaying product, dieline for corrugated hanging display, and a wholesale pricing sheet (for the purpose of redesigning the graphics). Notably, despite, as discussed below, now claiming that the documents and/or information provided to CIA was of a confidential, proprietary or trade secret nature (which it was not), StickerBeans neither demanded nor obtained any type of confidentiality or non-disclosure agreement from CIA before providing these documents and/or information, nor did it identify, advise or restrict (i.e. through the use of passwords or other electronic security mechanisms) the use or dissemination of these documents and/or information in any way. As a result of StickerBeans treatment of these documents and/or information, such documents and/or information cannot be considered trade secrets as a matter of California or Federal law.

13. CIA terminated its relationship with StickerBeans in February 2017.

14. In or about January, 2017, Lavitt and Levine formed Etel to design, produce, distribute and/or sell a line of rhinestone sticker products under the trade name "Sticker Bling Bling." The sticker products designed and sold by Etel are admittedly of a similar nature and quality to those sold by StickerBeans. Etel sells its line of sticker products through independent sales representatives to small and mid-size retailers within the state of California, and online through Amazon.com.

15. On March 24, 2017, StickerBeans, through its counsel, sent a letter to Plaintiffs, demanding that they: (1) terminate the use of StickerBeans designs and packaging because it infringed StickerBeans' purported trademark, trade dress and/or copyright, (2) terminate all advertising and sales of its Sticker Bling Bling products, (3) cease, desist and refrain from contacting StickerBeans' factory and/or suppliers, and (4) cease, desist and refrain from competing with StickerBeans. A true and correct copy of the March 24, 2017 letter is attached hereto as Exhibit "1."

16. Accordingly, StickerBeans' threats of trademark and/or trade dress infringement, copyright infringement, unfair competition, misappropriation, inhibition of fair and lawful competition, and trademark dilution have created an actual, substantial and justiciable case or controversy between Plaintiffs and StickerBeans concerning the right of Plaintiffs to operate, manufacture and sell their Sticker Bling Bling sticker products.

17. As a result of StickerBeans fraudulent acts and statements as alleged herein, Plaintiffs have and continue to suffer substantial injury and damage, and have lost gains, profits and/or advantages, which it would otherwise have obtained, but for StickerBeans' acts.

## COUNT I

### Declaration Of Non-Infringement, Invalidity, Unenforceability, and Cancellation Of Alleged Trademark Registration No. 5,088,211 – 28 U.S.C. §§ 2201 *et seq.* and 15 U.S.C. §§ 1119 & 1064

18. Plaintiffs hereby re-allege and incorporate the allegations in paragraphs 1 to 17 of the complaint as if fully set forth herein.

19. On information and belief, prior to the date of StickerBeans purported trademark and trade dress adoption as disclosed in U.S. Registration No. 5,088,211 ("StickerBeans Registration"), third parties developed and first introduced clear and colored rhinestones into individual sticker products, using designs, logos or pictures

that are common to a variety of industries and sectors, and for which StickerBeans does not own any exclusive rights to the images or designs for use on sticker products.

20. Moreover, a simple Google search for "rhinestone stickers" reveals numerous competitors who manufacture and sell similar sticker products, including at: *Top Trenz* – http://www.toptrenz.com/emoji-sticker-BLINGY-BLINGY-appliques-p/_blst4-over.htm (notably stating "We have been carrying those BLINGY stickers in our line since 2003"); *Michael's* – http://www.michaels.com/embellishments/bling/809188550 ; and *Etsy* -- https://www.etsy.com/market/rhinestone_stickers

21. On information and belief, the alleged designs and trade dress is used on sticker products offered for sale and sold, and that have long been offered for sale, sold, and are currently being sold, by others in the sticker industry.

22. Upon information and belief, StickerBeans does not have any valid proprietary trademark, patent or other monopolistic rights to its sticker designs or for the use of clear or colored rhinestones on sticker products.

23. On information and belief, the alleged trade dress does not include protectable trade dress, it is not inherently distinctive, has not acquired secondary meaning, and, therefore, cannot function as a source indicator.

24. Plaintiffs do not infringe, and have not infringed, any protectable trademark and/or trade dress packaging rights of StickerBeans, which is usually displayed along with StickerBeans word mark, as demonstrated below:

FRONT

1 Piece
Rhinestone Sticker
READY STICK SPARKLE
StickerBeans

FRONT

ORIGINAL STICKER
Bling Bling
Blingify Your World!™
With Bling-Bling Gemz™ for Extra Special Sparkle!

BACK

Collect them all & share them with your besties!
Make a personal statement!
BFF
Turn your phone case, computer, notebooks & all your other stuff into bling-a-licious, amazingly sparkly artistic masterpieces.
Be creative & most of all HAVE FUN!
And let your personality sparkle with StickerBeans!
WARNING:
CHOKING HAZARD SMALL PARTS NOT FOR CHILDREN UNDER 3
Visit StickerBeans.com

BACK

Blingify your phone, tablet, water bottle, laptop, notebooks, lockers & more. And every sticker you buy helps feed a hungry kid!
It's fun to collect them all to share and trade with your friends and besties.
StickerBlingBling.com
WARNING: CHOKING HAZARD.

25. Despite StickerBeans attempt to claim trademark and/or trade dress protection over its sticker designs and packaging, its sticker designs and packaging are wholly dissimilar to Plaintiffs' Sticker Bling Bling products, and do not constitute a valid and protectable trademark because the product features do not serve as a source identifier for StickerBeans, and if enforced, would "put competitors at a significant, non-reputation-related disadvantage." *Clicks Billiards Inc. v. Sixshooters Inc.*, 251 F.3d 1252, 1258 (9th Cir. 2001) (internal quotation marks omitted).

26. Pursuant to Section 37 of the Lanham Act, 15 U.S.C. § 1119, this Court is empowered to order cancellation of trademark registrations in any civil action in which the validity of the mark is placed in issue.

27. Pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064(3), a registered mark may be cancelled at any time if the registered mark is descriptive.

28. Plaintiffs respectfully submit that they are entitled to a declaration from this Court that Plaintiffs have not infringed any protectable trademark and/or trade dress right by advertising or selling their Sticker Bling Bling line of rhinestone sticker

products; StickerBeans has no rights in the alleged trade dress as it does not serve as a source identifier, that StickerBeans has no valid protectable rights to the StickerBeans Registration, and that said registration should be cancelled; StickerBeans is barred from asserting any claim for infringement of the alleged trademark or trade dress against Plaintiffs; and Plaintiffs have not engaged in unfair competition or false designation of origin.

## COUNT II

**Declaratory Judgment of No Trademark Infringement, Unfair Competition, Misappropriation of Advertising Ideas or Trade Secrets or Dilution – 28 U.S.C. §§ 2201 *et seq.* and 15 U.S.C. § 1125**

29. Plaintiffs hereby re-allege and incorporate the allegations in paragraphs 1 to 28 of the complaint as if fully set forth herein.

30. Plaintiffs assert that they are entitled to a declaratory judgment that StickerBeans does not own a famous mark for any alleged trade dress in a rhinestone sticker product or the advertising and/or packaging of such, nor does StickerBeans own any famous mark such that Plaintiffs' sale of the Sticker Bling Bling line of sticker products would purportedly dilute any alleged right of StickerBeans.

31. Plaintiffs assert that they are entitled to a declaratory judgment that StickerBeans does not have any valid, protectable proprietary rights to the manufacturing (including the identity of the manufacturer it uses) marketing, promotion, and sale of the sticker products adorned with clear or colored rhinestones, and Plaintiffs' manufacture, promotion, advertising or sale of its sticker products does not constitute trademark or trade dress infringement, false designation of origin or false advertising, or misappropriation of advertising ideas or trade secrets, or unfair competition under Section 43 of the Lanham Act, 15 U.S.C. § 1125, California law or at common law.

32. Plaintiffs' Sticker Bling Bling sticker products are not likely to be confused as to the source, origin, and/or sponsorship with StickerBeans' sticker products,

including its advertising, promotion or packaging of such products, because, as shown above, the parties incorporate different markings on their respective products, the differences in marketing channels through which each party's products are respectively sold, the expensive nature of StickerBeans' products, and the absence of any evidence of actual confusion in the marketplace.

33. As discussed above, numerous third parties and competitors pre-existed StickerBeans entrance into the sticker marketplace, and continue to exist; thus, Plaintiffs have not unfairly competed or misappropriated StickerBeans' advertising ideas, to the extent such are in any way protectable.

34. In addition, neither CIA nor Lavitt were provided any documents and/or information of StickerBeans that can be considered or construed as trade secret information as defined by California's Uniform Trade Secrets Act, Civil Code § 3426.1(d), as no written agreement between StickerBeans and CIA or Lavitt exists governing the parties' engagement or the provision/receipt of documents intended to be considered confidential, and StickerBeans has no policies in place to protect and/or secure its confidential documents and/or information; accordingly, StickerBeans has not and did not take any reasonable precautions to ensure that the documents and/or information provided to CIA and Lavitt were deemed to be confidential to the Company, or that such information was not publicly available from other sources.

35. Accordingly, Plaintiffs are entitled to a declaratory judgment that StickerBeans has no valid protectable rights to the purported trade dress of its sticker designs and/or packaging, that Plaintiffs have not infringed or diluted any of StickerBeans purported trademark or trade dress rights, and that Plaintiffs have not misappropriated any of StickerBeans advertising ideas or trade secrets in promoting, advertising, and selling their Sticker Bling Bling products.

**COUNT III**

**Declaratory Judgment of Non-Infringement of Copyright – 28 U.S.C. §§ 2201, 2202**

36. Plaintiffs hereby re-allege and incorporate the allegations in paragraphs 1 to 35 of the complaint as if fully set forth herein.

37. StickerBeans claims that its sticker designs is protected under the U.S. Copyright Act, but has not identified which sticker designs it is alleging are being infringed, or the copyright registrations it has obtained for such designs.

38. StickerBeans has made it clear to Plaintiffs through explicit threats of litigation that it intends to claim that Plaintiffs have infringed its copyrights.

39. By reason of StickerBeans' claims of copyright infringement, Plaintiffs are uncertain as to its rights with respect to one or more of its sticker product designs unless the issues between StcikerBeans and Plaintiffs are resolved.

40. This action is brought under the provisions of 28 U.S.C. §§ 2201 and 2202 for the purpose of determining a question in actual controversy between the parties.

**COUNT IV**

**Declaratory Judgment of Invalidity of Non-Competition Restrictions – 28 U.S.C. §§ 2201, 2202**

41. Plaintiffs hereby re-allege and incorporate the allegations in paragraphs 1 to 40 of the complaint as if fully set forth herein.

42. The State of California has a fundamental public policy against contracts that prevent workers from engaging in their lawful business endeavours. California Business and Professions Code § 16600 provides in pertinent part that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

43. An actual, present, and justiciable controversy has arisen between StickerBeans, on the one hand, and CIA, Lavitt and/or Etel, on the other hand, regarding the enforceability of StickerBeans' demand that CIA, Lavitt and Etel (a)

"provide written assurances that you will not move forward with entering into any purchase orders or other contracts or agreements with any third parties" to sell the Sticker Bling Bling products," (b) as to Lavitt only, "immediately cease, desist and refrain from taking any action in violation of your continuing duties to the Company [StickerBeans]," (c) "immediately cease, desist and refrain from contacting [StickerBeans'] factory, and its suppliers," and (d) "immediately cease, desist and refrain from otherwise competing with the Company [StickerBeans]" (together, the "Non-Competition Restrictions").

44. CIA, Lavitt and/or Etel contend that the Non-Competition Restrictions demanded by StickerBeans are governed by California law and are invalid and unenforceable as a matter of law under California Business and Professions Code § 16600 for multiple reasons, including that no written non-competition restrictions exist or were ever agreed to.

45. Unless the Non-Competition Restrictions are invalidated, Lavitt and Etel will not be able to operate and/or manage their business of designing, manufacturing and selling sticker products.

46. Based on StickerBeans' counsel's March 24, 2017 letter, StickerBeans contends that the Non-Competition Restrictions are enforceable and that it is entitled to specific performance of those provisions, which would preclude Lavitt and Etel from engaging in business with prospective customers.

47. Accordingly, CIA, Lavitt and Etel seek a judicial declaration that the Non-Competition Restrictions are unenforceable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Plaintiffs pray for judgment against Defendant Wishbone Collection, LLC d/b/a StickerBeans as follows:

A. For a declaration from this Court that the Defendant has no valid, protectable proprietary rights in the trademark and/or alleged trade dress, which is invalid, unenforceable, generic, and descriptive;

B. A declaration that Plaintiffs' marketing, advertising, promotion, and sale of the Sticker Bling Bling sticker products has not infringed Defendant's purported trademark and/or trade dress rights in the StickerBeans Registration;

C. Cancellation of U.S. Registration No. 5,088,211;

D. A declaration that Plaintiffs' advertising, marketing, promotion, and sale of the Sticker Bling Bling sticker products does not constitute trademark or trade dress infringement, false designation of origin or false advertising, or the misappropriation of advertising idea or trade secrets, or unfair competition under Section 43 of the Lanham Act, 15 U.S.C. § 1125, under California law, or at common law;

E. A declaration that Plaintiffs' advertising, marketing, promotion, and sale of the Sticker Bling Bling sticker products does not dilute any alleged famous mark owned by Defendant;

F. For an injunction preventing any further interference with Plaintiffs, its customers, manufacturers, retailers and suppliers;

G. For costs of suit incurred, including, but not limited to reasonable attorneys' fees;

H. That this Court grant such other and further relief that it deems just and proper.

Dated: March 31, 2017

Respectfully submitted,

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By: /s/Brandon J. Witkow
Brandon J. Witkow
Cory A. Baskin

Attorneys for Plaintiffs
*Etel Group, Inc., Creative Intelligence Advertising, Scott Lavitt & Judie Levine*

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b), Federal Rules of Civil Procedure and Local Rule 38-1, Plaintiffs Etel Group, Inc., Creative Intelligence Advertising, Scott Lavitt & Judie Levine hereby demand a trial by jury.

Dated: March 31, 2017

Respectfully submitted,

witkow | baskin

By: /s/Brandon J. Witkow
Brandon J. Witkow
Cory A. Baskin

Attorneys for Plaintiffs
*Etel Group, Inc., Creative Intelligence Advertising, Scott Lavitt & Judie Levine*